



February 26, 2016

ENGROSSED

HOUSE BILL No. 1028

DIGEST OF HB 1028 (Updated February 23, 2016 12:59 pm - DI 106)

Citations Affected: IC 7.1-5; IC 16-31; IC 16-42; IC 22-15; IC 25-1; IC 35-45; IC 35-48; IC 35-52.

Synopsis: Human trafficking and common nuisances. Repeals certain provision in current law defining the crimes of visiting and maintaining a common nuisance in connection with the unlawful use of: (1) alcohol; (2) legend drugs; and (3) controlled substances. Creates a new statute defining the crimes of visiting and maintaining a common nuisance in connection with: (1) the unlawful use of alcohol; (2) the unlawful use of a legend drug; (3) the unlawful use of controlled substances; and (4) certain human trafficking crimes. Makes visiting a common nuisance where certain human trafficking crimes are being committed a Class A misdemeanor, and makes maintaining a common nuisance where certain human trafficking crimes are being committed a Level 6 felony. Repeals obsolete provisions and makes conforming amendments.

Effective: July 1, 2016.

Truitt, Hale, Lehman, Riecken

(SENATE SPONSOR — HEAD)

January 5, 2016, read first time and referred to Committee on Courts and Criminal Code.

January 21, 2016, reported — Do Pass.

January 25, 2016, read second time, ordered engrossed.

January 26, 2016, engrossed. Read third time, passed. Yeas 94, nays 0.

SENATE ACTION

February 3, 2016, read first time and referred to Committee on Corrections & Criminal Law.

February 25, 2016, amended, reported favorably — Do Pass.

EH 1028—LS 6134/DI 69



February 26, 2016

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1028

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 7.1-5-10-21 IS REPEALED [EFFECTIVE JULY
2 1, 2016]. Sec. 21. (a) A person who knowingly or intentionally visits a
3 building, structure, vehicle, or other place when it is being used by any
4 person to buy an alcoholic beverage (if the sale is in violation of
5 section 5 of this chapter) commits visiting a common nuisance; a Class
6 B misdemeanor.
7 (b) A person who knowingly or intentionally maintains a building,
8 structure, vehicle, or other place that is used for the sale of alcoholic
9 beverages (if the sale is in violation of section 5 of this chapter)
10 commits maintaining a common nuisance; a Level 6 felony.
11 SECTION 2. IC 16-31-3-14, AS AMENDED BY P.L.168-2014,
12 SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2016]: Sec. 14. (a) A person holding a certificate or license
14 issued under this article must comply with the applicable standards and
15 rules established under this article. A certificate holder or license
16 holder is subject to disciplinary sanctions under subsection (b) if the
17 department of homeland security determines that the certificate holder

EH 1028—LS 6134/DI 69



or license holder:

- (1) engaged in or knowingly cooperated in fraud or material deception in order to obtain a certificate or license, including cheating on a certification or licensure examination;
- (2) engaged in fraud or material deception in the course of professional services or activities;
- (3) advertised services or goods in a false or misleading manner;
- (4) falsified or knowingly allowed another person to falsify attendance records or certificates of completion of continuing education courses required under this article or rules adopted under this article;
- (5) is convicted of a crime, if the act that resulted in the conviction has a direct bearing on determining if the certificate holder or license holder should be entrusted to provide emergency medical services;
- (6) is convicted of violating IC 9-19-14.5;
- (7) fails to comply and maintain compliance with or violates any applicable provision, standard, or other requirement of this article or rules adopted under this article;
- (8) continues to practice if the certificate holder or license holder becomes unfit to practice due to:
 - (A) professional incompetence that includes the undertaking of professional activities that the certificate holder or license holder is not qualified by training or experience to undertake;
 - (B) failure to keep abreast of current professional theory or practice;
 - (C) physical or mental disability; or
 - (D) addiction to, abuse of, or dependency on alcohol or other drugs that endanger the public by impairing the certificate holder's or license holder's ability to practice safely;
- (9) engages in a course of lewd or immoral conduct in connection with the delivery of services to the public;
- (10) allows the certificate holder's or license holder's name or a certificate or license issued under this article to be used in connection with a person who renders services beyond the scope of that person's training, experience, or competence;
- (11) is subjected to disciplinary action in another state or jurisdiction on grounds similar to those contained in this chapter. For purposes of this subdivision, a certified copy of a record of disciplinary action constitutes prima facie evidence of a disciplinary action in another jurisdiction;
- (12) assists another person in committing an act that would



1 constitute a ground for disciplinary sanction under this chapter;

2 or

3 (13) allows a certificate or license issued by the commission to
4 be:

5 (A) used by another person; or

6 (B) displayed to the public when the certificate or license is
7 expired, inactive, invalid, revoked, or suspended.

8 (b) The department of homeland security may issue an order under
9 IC 4-21.5-3-6 to impose one (1) or more of the following sanctions if
10 the department of homeland security determines that a certificate
11 holder or license holder is subject to disciplinary sanctions under
12 subsection (a):

13 (1) Revocation of a certificate holder's certificate or license
14 holder's license for a period not to exceed seven (7) years.

15 (2) Suspension of a certificate holder's certificate or license
16 holder's license for a period not to exceed seven (7) years.

17 (3) Censure of a certificate holder or license holder.

18 (4) Issuance of a letter of reprimand.

19 (5) Assessment of a civil penalty against the certificate holder or
20 license holder in accordance with the following:

21 (A) The civil penalty may not exceed five hundred dollars
22 (\$500) per day per violation.

23 (B) If the certificate holder or license holder fails to pay the
24 civil penalty within the time specified by the department of
25 homeland security, the department of homeland security may
26 suspend the certificate holder's certificate or license holder's
27 license without additional proceedings.

28 (6) Placement of a certificate holder or license holder on
29 probation status and requirement of the certificate holder or
30 license holder to:

31 (A) report regularly to the department of homeland security
32 upon the matters that are the basis of probation;

33 (B) limit practice to those areas prescribed by the department
34 of homeland security;

35 (C) continue or renew professional education approved by the
36 department of homeland security until a satisfactory degree of
37 skill has been attained in those areas that are the basis of the
38 probation; or

39 (D) perform or refrain from performing any acts, including
40 community restitution or service without compensation, that
41 the department of homeland security considers appropriate to
42 the public interest or to the rehabilitation or treatment of the



1 certificate holder or license holder.

2 The department of homeland security may withdraw or modify
3 this probation if the department of homeland security finds after
4 a hearing that the deficiency that required disciplinary action is
5 remedied or that changed circumstances warrant a modification
6 of the order.

7 (c) If an applicant or a certificate holder or license holder has
8 engaged in or knowingly cooperated in fraud or material deception to
9 obtain a certificate or license, including cheating on the certification or
10 licensure examination, the department of homeland security may
11 rescind the certificate or license if it has been granted, void the
12 examination or other fraudulent or deceptive material, and prohibit the
13 applicant from reapplying for the certificate or license for a length of
14 time established by the department of homeland security.

15 (d) The department of homeland security may deny certification or
16 licensure to an applicant who would be subject to disciplinary sanctions
17 under subsection (b) if that person were a certificate holder or license
18 holder, has had disciplinary action taken against the applicant or the
19 applicant's certificate or license to practice in another state or
20 jurisdiction, or has practiced without a certificate or license in violation
21 of the law. A certified copy of the record of disciplinary action is
22 conclusive evidence of the other jurisdiction's disciplinary action.

23 (e) The department of homeland security may order a certificate
24 holder or license holder to submit to a reasonable physical or mental
25 examination if the certificate holder's or license holder's physical or
26 mental capacity to practice safely and competently is at issue in a
27 disciplinary proceeding. Failure to comply with a department of
28 homeland security order to submit to a physical or mental examination
29 makes a certificate holder or license holder liable to temporary
30 suspension under subsection (i).

31 (f) Except as provided under subsection (a), subsection (g), and
32 section 14.5 of this chapter, a certificate or license may not be denied,
33 revoked, or suspended because the applicant, certificate holder, or
34 license holder has been convicted of an offense. The acts from which
35 the applicant's, certificate holder's, or license holder's conviction
36 resulted may be considered as to whether the applicant or certificate
37 holder or license holder should be entrusted to serve the public in a
38 specific capacity.

39 (g) The department of homeland security may deny, suspend, or
40 revoke a certificate or license issued under this article if the individual
41 who holds or is applying for the certificate or license is convicted of
42 any of the following:



- (1) Possession of cocaine or a narcotic drug under IC 35-48-4-6.
- (2) Possession of methamphetamine under IC 35-48-4-6.1.
- (3) Possession of a controlled substance under IC 35-48-4-7(a).
- (4) Fraudulently obtaining a controlled substance under IC 35-48-4-7(c).
- (5) Manufacture of paraphernalia as a Class D felony (for a crime committed before July 1, 2014) or Level 6 felony (for a crime committed after June 30, 2014) under IC 35-48-4-8.1(b).
- (6) Dealing in paraphernalia as a Class D felony (for a crime committed before July 1, 2014) or Level 6 felony (for a crime committed after June 30, 2014) under IC 35-48-4-8.5(b).
- (7) Possession of paraphernalia as a Class D felony (for a crime committed before July 1, 2014) or Level 6 felony (for a crime committed after June 30, 2014) under IC 35-48-4-8.3(b).
- (8) Possession of marijuana, hash oil, hashish, or salvia as a Class D felony (for a crime committed before July 1, 2014) or Level 6 felony (for a crime committed after June 30, 2014) under IC 35-48-4-11.
- (9) Possession of a synthetic drug or synthetic drug lookalike substance as a Class D felony (for a crime committed before July 1, 2014) or Level 6 felony (for a crime committed after June 30, 2014) under IC 35-48-4-11.5 (or under IC 35-48-4-11 before its amendment in 2013).
- (10) Maintaining a common nuisance under IC 35-48-4-13 **(repealed) or IC 35-45-1-5, if the common nuisance involves a controlled substance.**
- (11) An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.
- (12) Conspiracy under IC 35-41-5-2 to commit an offense listed in this section.
- (13) Attempt under IC 35-41-5-1 to commit an offense listed in this section.
- (14) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described in this section.
- (h) A decision of the department of homeland security under subsections (b) through (g) may be appealed to the commission under IC 4-21.5-3-7.
- (i) The department of homeland security may temporarily suspend a certificate holder's certificate or license holder's license under IC 4-21.5-4 before a final adjudication or during the appeals process if the department of homeland security finds that a certificate holder or



1 license holder would represent a clear and immediate danger to the
 2 public's health, safety, or property if the certificate holder or license
 3 holder were allowed to continue to practice.

4 (j) On receipt of a complaint or information alleging that a person
 5 certified or licensed under this chapter or IC 16-31-3.5 has engaged in
 6 or is engaging in a practice that is subject to disciplinary sanctions
 7 under this chapter, the department of homeland security must initiate
 8 an investigation against the person.

9 (k) The department of homeland security shall conduct a factfinding
 10 investigation as the department of homeland security considers proper
 11 in relation to the complaint.

12 (l) The department of homeland security may reinstate a certificate
 13 or license that has been suspended under this section if the department
 14 of homeland security is satisfied that the applicant is able to practice
 15 with reasonable skill, competency, and safety to the public. As a
 16 condition of reinstatement, the department of homeland security may
 17 impose disciplinary or corrective measures authorized under this
 18 chapter.

19 (m) The department of homeland security may not reinstate a
 20 certificate or license that has been revoked under this chapter.

21 (n) The department of homeland security must be consistent in the
 22 application of sanctions authorized in this chapter. Significant
 23 departures from prior decisions involving similar conduct must be
 24 explained in the department of homeland security's findings or orders.

25 (o) A certificate holder may not surrender the certificate holder's
 26 certificate, and a license holder may not surrender the license holder's
 27 license, without the written approval of the department of homeland
 28 security, and the department of homeland security may impose any
 29 conditions appropriate to the surrender or reinstatement of a
 30 surrendered certificate or license.

31 (p) For purposes of this section, "certificate holder" means a person
 32 who holds:

- 33 (1) an unlimited certificate;
- 34 (2) a limited or probationary certificate; or
- 35 (3) an inactive certificate.

36 (q) For purposes of this section, "license holder" means a person
 37 who holds:

- 38 (1) an unlimited license;
- 39 (2) a limited or probationary license; or
- 40 (3) an inactive license.

41 SECTION 3. IC 16-42-19-24 IS REPEALED [EFFECTIVE JULY
 42 1, 2016]. Sec. 24. (a) A store, shop, warehouse, dwelling house,



apartment, building, vehicle, boat, aircraft, or any other place that is used:

(1) by a person for the purpose of unlawfully using a legend drug; or

(2) for the unlawful keeping or selling of the legend drug; is a common nuisance:

(b) A person may not:

(1) keep or maintain a common nuisance; or

(2) frequent or visit a place knowing the place to be used for a purpose;

as described in subsection (a):

SECTION 4. IC 16-42-19-27, AS AMENDED BY P.L.187-2015, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 27. (a) Unless otherwise specified, a person who knowingly violates this chapter, except sections ~~24~~, 25(b) and 30(c) of this chapter, commits a Level 6 felony. However, the offense is a Level 5 felony if the person has a prior conviction under this subsection or IC 16-6-8-10(a) before its repeal.

~~(b) A person who violates section 24 of this chapter commits a Class B misdemeanor.~~

~~(c)~~ (b) A person who violates section 25(b) of this chapter commits dealing in an anabolic steroid, a Level 5 felony. However, the offense is a Level 4 felony if the person delivered the anabolic steroid to a person who is:

(1) less than eighteen (18) years of age; and

(2) at least three (3) years younger than the delivering person.

~~(d)~~ (c) A person who violates section 30(c) of this chapter commits a Class A infraction.

SECTION 5. IC 22-15-5-16, AS AMENDED BY P.L.238-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 16. (a) A practitioner shall comply with the standards established under this licensing program. A practitioner is subject to the exercise of the disciplinary sanctions under subsection (b) if the department finds that a practitioner has:

(1) engaged in or knowingly cooperated in fraud or material deception in order to obtain a license to practice, including cheating on a licensing examination;

(2) engaged in fraud or material deception in the course of professional services or activities;

(3) advertised services or goods in a false or misleading manner;

(4) falsified or knowingly allowed another person to falsify attendance records or certificates of completion of continuing



- education courses provided under this chapter;
 - (5) been convicted of a crime that has a direct bearing on the practitioner's ability to continue to practice competently;
 - (6) knowingly violated a state statute or rule or federal statute or regulation regulating the profession for which the practitioner is licensed;
 - (7) continued to practice although the practitioner has become unfit to practice due to:
 - (A) professional incompetence;
 - (B) failure to keep abreast of current professional theory or practice;
 - (C) physical or mental disability; or
 - (D) addiction to, abuse of, or severe dependency on alcohol or other drugs that endanger the public by impairing a practitioner's ability to practice safely;
 - (8) engaged in a course of lewd or immoral conduct in connection with the delivery of services to the public;
 - (9) allowed the practitioner's name or a license issued under this chapter to be used in connection with an individual or business who renders services beyond the scope of that individual's or business's training, experience, or competence;
 - (10) had disciplinary action taken against the practitioner or the practitioner's license to practice in another state or jurisdiction on grounds similar to those under this chapter;
 - (11) assisted another person in committing an act that would constitute a ground for disciplinary sanction under this chapter; or
 - (12) allowed a license issued by the department to be:
 - (A) used by another person; or
 - (B) displayed to the public when the license has expired, is inactive, is invalid, or has been revoked or suspended.
- For purposes of subdivision (10), a certified copy of a record of disciplinary action constitutes prima facie evidence of a disciplinary action in another jurisdiction.
- (b) The department may impose one (1) or more of the following sanctions if the department finds that a practitioner is subject to disciplinary sanctions under subsection (a):
- (1) Permanent revocation of a practitioner's license.
 - (2) Suspension of a practitioner's license.
 - (3) Censure of a practitioner.
 - (4) Issuance of a letter of reprimand.
 - (5) Assess a civil penalty against the practitioner in accordance



with the following:

(A) The civil penalty may not be more than one thousand dollars (\$1,000) for each violation listed in subsection (a), except for a finding of incompetency due to a physical or mental disability.

(B) When imposing a civil penalty, the department shall consider a practitioner's ability to pay the amount assessed. If the practitioner fails to pay the civil penalty within the time specified by the department, the department may suspend the practitioner's license without additional proceedings. However, a suspension may not be imposed if the sole basis for the suspension is the practitioner's inability to pay a civil penalty.

(6) Place a practitioner on probation status and require the practitioner to:

(A) report regularly to the department upon the matters that are the basis of probation;

(B) limit practice to those areas prescribed by the department;

(C) continue or renew professional education approved by the department until a satisfactory degree of skill has been attained in those areas that are the basis of the probation; or

(D) perform or refrain from performing any acts, including community restitution or service without compensation, that the department considers appropriate to the public interest or to the rehabilitation or treatment of the practitioner.

The department may withdraw or modify this probation if the department finds after a hearing that the deficiency that required disciplinary action has been remedied or that changed circumstances warrant a modification of the order.

(c) If an applicant or a practitioner has engaged in or knowingly cooperated in fraud or material deception to obtain a license to practice, including cheating on the licensing examination, the department may rescind the license if it has been granted, void the examination or other fraudulent or deceptive material, and prohibit the applicant from reapplying for the license for a length of time established by the department.

(d) The department may deny licensure to an applicant who has had disciplinary action taken against the applicant or the applicant's license to practice in another state or jurisdiction or who has practiced without a license in violation of the law. A certified copy of the record of disciplinary action is conclusive evidence of the other jurisdiction's disciplinary action.

(e) The department may order a practitioner to submit to a



1 reasonable physical or mental examination if the practitioner's physical
 2 or mental capacity to practice safely and competently is at issue in a
 3 disciplinary proceeding. Failure to comply with a department order to
 4 submit to a physical or mental examination makes a practitioner liable
 5 to temporary suspension under subsection (j).

6 (f) Except as provided under subsection (g) or (h), a license may not
 7 be denied, revoked, or suspended because the applicant or holder has
 8 been convicted of an offense. The acts from which the applicant's or
 9 holder's conviction resulted may, however, be considered as to whether
 10 the applicant or holder should be entrusted to serve the public in a
 11 specific capacity.

12 (g) The department may deny, suspend, or revoke a license issued
 13 under this chapter if the individual who holds the license is convicted
 14 of any of the following:

- 15 (1) Possession of cocaine or a narcotic drug under IC 35-48-4-6.
- 16 (2) Possession of methamphetamine under IC 35-48-4-6.1.
- 17 (3) Possession of a controlled substance under IC 35-48-4-7(a).
- 18 (4) Fraudulently obtaining a controlled substance under
- 19 IC 35-48-4-7(b) (for a crime committed before July 1, 2014) or
- 20 IC 35-48-4-7(c) (for a crime committed after June 30, 2014).
- 21 (5) Manufacture of paraphernalia as a Class D felony (for a crime
- 22 committed before July 1, 2014) or a Level 6 felony (for a crime
- 23 committed after June 30, 2014) under IC 35-48-4-8.1(b).
- 24 (6) Dealing in paraphernalia as a Class D felony (for a crime
- 25 committed before July 1, 2014) or a Level 6 felony (for a crime
- 26 committed after June 30, 2014) under IC 35-48-4-8.5(b).
- 27 (7) Possession of paraphernalia as a Class D felony (for a crime
- 28 committed before July 1, 2014) or a Level 6 felony (for a crime
- 29 committed after June 30, 2014) under IC 35-48-4-8.3(b).
- 30 (8) Possession of marijuana, hash oil, hashish, or salvia as a Class
- 31 D felony (for a crime committed before July 1, 2014) or a Level
- 32 6 felony (for a crime committed after June 30, 2014) under
- 33 IC 35-48-4-11.
- 34 (9) Possession of a synthetic drug or synthetic drug lookalike
- 35 substance as a:
- 36 (A) Class D felony for a crime committed before July 1, 2014,
- 37 under:
- 38 (i) IC 35-48-4-11, before its amendment in 2013; or
- 39 (ii) IC 35-48-4-11.5; or
- 40 (B) Level 6 felony for a crime committed after June 30, 2014,
- 41 under IC 35-48-4-11.5.
- 42 (10) Maintaining a common nuisance under IC 35-48-4-13



(repealed) or IC 35-45-1-5, if the common nuisance involves a controlled substance.

(11) An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.

(12) Conspiracy under IC 35-41-5-2 to commit an offense listed in this subsection.

(13) Attempt under IC 35-41-5-1 to commit an offense listed in this subsection.

(14) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described in this subsection.

(h) The department shall deny, revoke, or suspend a license issued under this chapter if the individual who holds the license is convicted of any of the following:

(1) Dealing in cocaine or a narcotic drug under IC 35-48-4-1.

(2) Dealing in methamphetamine under IC 35-48-4-1.1.

(3) Dealing in a schedule I, II, or III controlled substance under IC 35-48-4-2.

(4) Dealing in a schedule IV controlled substance under IC 35-48-4-3.

(5) Dealing in a schedule V controlled substance under IC 35-48-4-4.

(6) Dealing in a substance represented to be a controlled substance under IC 35-48-4-4.5.

(7) Knowingly or intentionally manufacturing, advertising, distributing, or possessing with intent to manufacture, advertise, or distribute a substance represented to be a controlled substance under IC 35-48-4-4.6.

(8) Dealing in a counterfeit substance under IC 35-48-4-5.

(9) Dealing in marijuana, hash oil, hashish, or salvia as a felony under IC 35-48-4-10.

(10) Dealing in a synthetic drug or synthetic drug lookalike substance under IC 35-48-4-10.5 (or under IC 35-48-4-10(b) before its amendment in 2013).

(11) Conspiracy under IC 35-41-5-2 to commit an offense listed in this subsection.

(12) Attempt under IC 35-41-5-1 to commit an offense listed in this subsection.

(13) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described in this subsection.

(14) A violation of any federal or state drug law or rule related to



1 wholesale legend drug distributors licensed under IC 25-26-14.

2 (i) A decision of the department under subsections (b) through (h)
3 may be appealed to the commission under IC 4-21.5-3-7.

4 (j) The department may temporarily suspend a practitioner's license
5 under IC 4-21.5-4 before a final adjudication or during the appeals
6 process if the department finds that a practitioner represents a clear and
7 immediate danger to the public's health, safety, or property if the
8 practitioner is allowed to continue to practice.

9 (k) On receipt of a complaint or an information alleging that a
10 person licensed under this chapter has engaged in or is engaging in a
11 practice that jeopardizes the public health, safety, or welfare, the
12 department shall initiate an investigation against the person.

13 (l) Any complaint filed with the office of the attorney general
14 alleging a violation of this licensing program shall be referred to the
15 department for summary review and for its general information and any
16 authorized action at the time of the filing.

17 (m) The department shall conduct a fact finding investigation as the
18 department considers proper in relation to the complaint.

19 (n) The department may reinstate a license that has been suspended
20 under this section if, after a hearing, the department is satisfied that the
21 applicant is able to practice with reasonable skill, safety, and
22 competency to the public. As a condition of reinstatement, the
23 department may impose disciplinary or corrective measures authorized
24 under this chapter.

25 (o) The department may not reinstate a license that has been
26 revoked under this chapter. An individual whose license has been
27 revoked under this chapter may not apply for a new license until seven
28 (7) years after the date of revocation.

29 (p) The department shall seek to achieve consistency in the
30 application of sanctions authorized in this chapter. Significant
31 departures from prior decisions involving similar conduct must be
32 explained in the department's findings or orders.

33 (q) A practitioner may petition the department to accept the
34 surrender of the practitioner's license instead of having a hearing before
35 the commission. The practitioner may not surrender the practitioner's
36 license without the written approval of the department, and the
37 department may impose any conditions appropriate to the surrender or
38 reinstatement of a surrendered license.

39 (r) A practitioner who has been subjected to disciplinary sanctions
40 may be required by the commission to pay the costs of the proceeding.
41 The practitioner's ability to pay shall be considered when costs are
42 assessed. If the practitioner fails to pay the costs, a suspension may not



1 be imposed solely upon the practitioner's inability to pay the amount
2 assessed. The costs are limited to costs for the following:

- 3 (1) Court reporters.
- 4 (2) Transcripts.
- 5 (3) Certification of documents.
- 6 (4) Photo duplication.
- 7 (5) Witness attendance and mileage fees.
- 8 (6) Postage.
- 9 (7) Expert witnesses.
- 10 (8) Depositions.
- 11 (9) Notarizations.

12 SECTION 6. IC 25-1-1.1-2, AS AMENDED BY P.L.168-2014,
13 SECTION 36, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2016]: Sec. 2. Notwithstanding IC 25-1-7, a board, a
15 commission, or a committee may suspend, deny, or revoke a license or
16 certificate issued under this title by the board, the commission, or the
17 committee without an investigation by the office of the attorney general
18 if the individual who holds the license or certificate is convicted of any
19 of the following and the board, commission, or committee determines,
20 after the individual has appeared in person, that the offense affects the
21 individual's ability to perform the duties of the profession:

- 22 (1) Possession of cocaine or a narcotic drug under IC 35-48-4-6.
- 23 (2) Possession of methamphetamine under IC 35-48-4-6.1.
- 24 (3) Possession of a controlled substance under IC 35-48-4-7(a).
- 25 (4) Fraudulently obtaining a controlled substance under
26 IC 35-48-4-7(c).
- 27 (5) Manufacture of paraphernalia as a Class D felony (for a crime
28 committed before July 1, 2014) or a Level 6 felony (for a crime
29 committed after June 30, 2014) under IC 35-48-4-8.1(b).
- 30 (6) Dealing in paraphernalia as a Class D felony (for a crime
31 committed before July 1, 2014) or a Level 6 felony (for a crime
32 committed after June 30, 2014) under IC 35-48-4-8.5(b).
- 33 (7) Possession of paraphernalia as a Class D felony (for a crime
34 committed before July 1, 2014) or a Level 6 felony (for a crime
35 committed after June 30, 2014) under IC 35-48-4-8.3(b).
- 36 (8) Possession of marijuana, hash oil, hashish, or salvia as a Class
37 D felony (for a crime committed before July 1, 2014) or a Level
38 6 felony (for a crime committed after June 30, 2014) under
39 IC 35-48-4-11.
- 40 (9) Possession of a synthetic drug or synthetic drug lookalike
41 substance as a:
42 (A) Class D felony for a crime committed before July 1, 2014,



under:

(i) IC 35-48-4-11, before its amendment in 2013; or

(ii) IC 35-48-4-11.5; or

(B) Level 6 felony for a crime committed after June 30, 2014, under IC 35-48-4-11.5.

(10) Maintaining a common nuisance under IC 35-48-4-13 **(repealed) or IC 35-45-1-5, if the common nuisance involves a controlled substance.**

(11) An offense relating to registration, labeling, and prescription forms under IC 35-48-4-14.

(12) Conspiracy under IC 35-41-5-2 to commit an offense listed in this section.

(13) Attempt under IC 35-41-5-1 to commit an offense listed in this section.

(14) A sex crime under IC 35-42-4.

(15) A felony that reflects adversely on the individual's fitness to hold a professional license.

(16) An offense in any other jurisdiction in which the elements of the offense for which the conviction was entered are substantially similar to the elements of an offense described in this section.

SECTION 7. IC 35-45-1-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 5. (a) As used in this section, "common nuisance" means a building, structure, vehicle, or other place that is used for (1) or more of the following purposes:**

(1) To buy an alcoholic beverage in violation of IC 7.1-5-10-5.

(2) To unlawfully use, keep, or sell a legend drug.

(3) To unlawfully:

(A) use;

(B) manufacture;

(C) keep;

(D) offer for sale;

(E) sell;

(F) deliver; or

(G) finance the delivery of;

a controlled substance or an item of drug paraphernalia (as described in IC 35-48-4-8.5).

(4) To provide a location for a person to pay, offer to pay, or agree to pay money or other property to another person for an individual whom the person knows has been forced into:

(A) forced labor;

(B) involuntary servitude; or



- 1 (C) prostitution.
- 2 (5) To provide a location for a person to commit a violation of
- 3 IC 35-42-3.5-1(a) through IC 35-42-3.5-1(d) (human
- 4 trafficking).
- 5 (b) A person who knowingly or intentionally visits a common
- 6 nuisance described in subsections (a)(1) through (a)(4) commits
- 7 visiting a common nuisance. The offense is a:
- 8 (1) Class B misdemeanor if the common nuisance is used for
- 9 the unlawful:
- 10 (A) sale of an alcoholic beverage as set forth in subsection
- 11 (a)(1); or
- 12 (B) use, keeping, or sale of a legend drug as set forth in
- 13 subsection (a)(2); or
- 14 (C) use, manufacture, keeping, offer for sale, sale, delivery,
- 15 or financing the delivery of a controlled substance or item
- 16 of drug paraphernalia (as described in IC 35-48-4-8.5), as
- 17 set forth in subsection (a)(3);
- 18 (2) Class A misdemeanor if:
- 19 (A) the common nuisance is used as a location for a person
- 20 to pay, offer to pay, or agree to pay for a person who has
- 21 been forced into forced labor, involuntary servitude, or
- 22 prostitution as set forth in subsection (a)(4); or
- 23 (B) the person knowingly, intentionally, or recklessly takes
- 24 a person less than eighteen (18) years of age or an
- 25 endangered adult (as defined in IC 12-10-3-2) into a
- 26 common nuisance used to unlawfully:
- 27 (i) use;
- 28 (ii) manufacture;
- 29 (iii) keep;
- 30 (iv) offer for sale;
- 31 (v) sell;
- 32 (vi) deliver; or
- 33 (vii) finance the delivery of;
- 34 a controlled substance or an item of drug paraphernalia,
- 35 as set forth in subsection (a)(3); and
- 36 (3) Level 6 felony if the person:
- 37 (A) knowingly, intentionally, or recklessly takes a person
- 38 less than eighteen (18) years of age or an endangered adult
- 39 (as defined in IC 12-10-3-2) into a common nuisance used
- 40 to unlawfully:
- 41 (i) use;
- 42 (ii) manufacture;



(iii) keep;

(iv) offer for sale;

(v) sell;

(vi) deliver; or

(vii) finance the delivery of;

a controlled substance or an item of drug paraphernalia, as set forth in subsection (a)(3); and

(B) has a prior unrelated conviction for a violation of this section involving a controlled substance or drug paraphernalia.

(c) A person who knowingly or intentionally maintains a common nuisance commits maintaining a common nuisance, a Level 6 felony.

SECTION 8. IC 35-48-4-13 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 13: (a) A person who knowingly or intentionally visits a building, structure, vehicle, or other place that is used by any person to unlawfully use a controlled substance commits visiting a common nuisance, a Class B misdemeanor.

(b) A person who knowingly or intentionally maintains a building, structure, vehicle, or other place that is used one (1) or more times:

(1) by persons to unlawfully use controlled substances; or

(2) for unlawfully:

(A) manufacturing;

(B) keeping;

(C) offering for sale;

(D) selling;

(E) delivering; or

(F) financing the delivery of;

controlled substances; or items of drug paraphernalia as described in IC 35-48-4-8.5;

commits maintaining a common nuisance, a Level 6 felony.

SECTION 9. IC 35-48-4-13.3 IS REPEALED [EFFECTIVE JULY 1, 2016]. Sec. 13.3: A person who recklessly, knowingly, or intentionally takes a person less than eighteen (18) years of age or an endangered adult (as defined in IC 12-10-3-2) into a building, structure, vehicle, or other place that is being used by any person to:

(1) unlawfully possess drugs or controlled substances; or

(2) unlawfully:

(A) manufacture;

(B) keep;

(C) offer for sale;

(D) sell;



1 (E) deliver; or
2 (F) finance the delivery of;
3 drugs or controlled substances;
4 commits a Class A misdemeanor. However, the offense is a Level 6
5 felony if the person has a prior unrelated conviction under this section.
6 SECTION 10. IC 35-52-7-77 IS REPEALED [EFFECTIVE JULY
7 1, 2016]. Sec. 77. IC 7.1-5-10-21 defines a crime concerning alcohol.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1028, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1028 as introduced.)

WASHBURN

Committee Vote: Yeas 12, Nays 0

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1028, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1028 as printed January 22, 2016.)

YOUNG R MICHAEL, Chairperson

Committee Vote: Yeas 8, Nays 0.

